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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

PATRICK RAMIREZ

Petitioner

v.

STATE OF INDIANA

Respondent

On Writ Of Certiorari To
The Court Of Appeals Of Indiana

BRIEF FOR PETITIONER

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QUESTION PRESENTED

Did the Indiana state courts have authority to try the petitioner for crimes which were not contained in the untried informations and which did not arise out of the same transaction as did the criminal charges which formed the basis of the detainer used by state prosecuting authorities to obtain temporary custody of the petitioner under Article 4 of the Interstate Agreement on Detainers?

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OPINIONS AND ORDERS OF THE COURTS BELOW

The opinion of the Court of Appeals of Indiana dated October 26, 1983 is officially reported as *Ramirez* v. *State of Indiana*, 455 N.E.2d 609 (Ind. Ct. App. 1983). It is also printed in the joint appendix. (J.A. 165) The Court subsequently denied a petition for rehearing, without opinion, on February 1, 1984. A timely petition to transfer was denied by the Indiana Supreme Court, without opinion, on May 11, 1984. (J.A. 180)

JURISDICTION

The petition to transfer was denied by the Indiana Supreme Court on May 11, 1984. The *pro se* petition for certiorari was filed on July 13, 1984 and was granted on October 26, 1984. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution, Art. IV, sec. 2, cl. 2—A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

U.S. Constitution, Art. I, sec. 10, cl. 3—No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Interstate Agreement on Detainers—The text of this interstate compact, as presently codified in the Indiana

Code, is set out in Appendix A of this brief. It is codified at § 35-33-10-4. This is a recodification, without change, of the Agreement at the time of the events in this case; it was then codified at § 35-2.1-2-4. Appendix B.

The Interstate Agreement can also be found at 18 U.S.C. App. 545-48 (1982).

In the Michigan Code, it appears at Mich. Comp. Laws Ann. § 780.601.

In the Uniform Laws Annotated, it can be found at 11 U.L.A. 323 (1974).

STATEMENT OF THE CASE

Introduction

This case involves two "causes" brought against the petitioner by the State of Indiana, Cause 424 (Class C felonies) and Cause 470 (Class D felonies). While the petitioner was incarcerated in Michigan, the State of Indiana sought to obtain jurisdiction over him under the provisions of the Interstate Agreement on Detainers (IAD).[1] The Indiana prosecutor named only Cause 470 in

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[1] *An Overview of the Interstate Agreement on Detainers.*

This Court described the basic procedures under which a prisoner against whom a detainer has been lodged may be transferred to the temporary custody of the receiving State in *Cuyler* v. *Adams*, 449 U.S. 433 (1981). There are two procedures. One may be invoked by the prisoner; the other by the prosecuting attorney of the receiving State:

> *Article III* of the Agreement provides the prisoner-initiated procedure. It requires the warden to notify the prisoner of all outstanding detainers and then to inform him of his right to request final disposition of the criminal charges underlying those detainers. If the prisoner initiates the transfer by demanding disposition (which under the Agreement automatically extends to *all* pending charges in the receiving State), the authorities in the receiving State must bring him to trial within 180 days or the charge will be dismissed with prejudice, absent good cause shown.

the detainer sent to Michigan. Believing that Indiana intended to bring him to trial only on that "cause," the petitioner waived his rights to a pretransfer extradition hearing and voluntarily agreed to be returned to Indiana for trial on Cause 470. However, upon his return to Indiana, the petitioner discovered that the State of Indiana intended to try him on Cause 424 as well. He then made a pretrial motion to dismiss those charges as improperly brought under the provisions of the IAD; the Indiana trial court overruled the motion. The petitioner subsequently moved in the trial court to correct errors. After denial of that motion, he appealed to the Court of Appeals of Indiana which affirmed the judgment of the trial court. He now brings to this Court the question of whether the State of Indiana could try him for charges which were not mentioned in the detainer. The following paragraphs outline in greater detail the early procedural history of the two causes, as well as the proceedings that occurred after the petitioner was returned to Indiana.

Article IV of the Agreement provides the procedure by which the prosecutor in the receiving State may initiate the transfer. First, the prosecutor must file with the authorities in the sending State written notice of the custody request, approved by a court having jurisdiction to hear the underlying charges. For the next 30 days, the prisoner and prosecutor must wait while the Governor of the sending State, on his own motion or that of the prisoner, decides whether to disapprove the request. If the Governor does not disapprove, the prisoner is transferred to the temporary custody of the receiving State where he must be brought to trial on the charges underlying the detainer within 120 days of his arrival. Again, if the prisoner is not brought to trial within the time period, the charges will be dismissed with prejudice, absent good cause shown.

449 U.S. at 444 (footnote omitted).

This litigation concerns a prisoner transfer pursuant to Article 4 of the IAD.

Cause 424—Early Proceedings

On March 20, 1979, the petitioner was charged by information with three counts of dealing in a schedule IV controlled substance (Diazepam), class C felonies, under Cause 424. These charges arose from events that occurred on January 28, 1979, March 9, 1979, and March 12, 1979. (J.A. 2-10, R.7-12) On April 5, 1979, the petitioner was arraigned, entered a plea of not guilty and requested a jury trial. After several interlocutory motions not immediately relevant here, on November 16, 1979 the petitioner withdrew his not guilty plea and entered a guilty plea pursuant to the Recommendation for Plea Bargain filed on the same date. (J.A. 23-25, R.37-38) However, on December 14, 1979, the court rejected the plea bargain and set trial for March 6, 1980. (J.A. 35, R.139) A continuance was later granted.

Cause 470—Early Proceedings

On May 5, 1980, petitioner was arraigned on Cause 470. He was charged with two counts of delivery of marijuana. (R.522) These events were alleged to have occurred on December 17 and 21, 1979. Petitioner entered a plea of not guilty and requested a jury trial.

On November 19, 1980, petitioner was incarcerated in Southern Michigan Prison, Jackson, Michigan as a result of a conviction in the Michigan courts. (J.A. 72, R.576)

The Interstate Agreement On Detainers

On March 16, 1981, while the petitioner was serving a sentence in the Southern Michigan prison at Jackson, Michigan, the Indiana prosecutor mailed the warden certified copies of a two-count class D felony charge, Cause 470, and requested that it be filed as a detainer against

the petitioner under the provisions of the IAD.[2] (J.A. 88-106, R.555-59) On March 19, after being informed of the provisions of the IAD by an official of the warden's office, and after talking to an attorney, the petitioner signed a waiver and voluntarily agreed to be returned to Indiana for trial on the offenses listed in Cause 470, two counts of delivery of marijuana. (J.A. 62, R.562) The petitioner was told that he had the option to oppose extradition and request a hearing. He was also told that if he waived a pretransfer hearing, he would be charged with dealing in marijuana. (J.A. 62, R.562) He responded "well, no problem, I guess I'll sign it." (J.A. 62, R.562-63) The petitioner testified that, if he had known that the State of Indiana was seeking to extradite him for prosecution under the more serious counts in Cause 424, he would not have waived an extradition hearing. (J.A. 63, R.564) As to Cause 424, the petitioner testified that "no one had

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[2] One of the documents sent to Michigan erroneously described the outstanding charge as a three-count information dealing in marijuana under Cause 424. (J.A. 89-91, R.556, Def. Ex. #2) The Court of Appeals of Indiana noted:

> This document was apparently understood by Michigan authorities to refer to the two-count dealing in marijuana information transmitted earlier. The record shows Ramirez was informed in writing of the following outstanding information against him: "Howard County, Indiana—two counts of delivery of marijuana; bench warrant." Record at 559. Further, there is evidence the Michigan authorities verbally informed Ramirez his return to Indiana was requested to stand trial on charges of dealing in Marijuana, a class D felony.
>
> Based on this evidence, a reasonable fact finder could only conclude Ramirez' presence in Indiana on Cause 424, dealing in a schedule IV controlled substance, was secured outside the terms of the Agreement. The fact the Agreement on Detainers Form V transmitted to Michigan had typed upon it "Cause Number 424" is not sufficient evidence to the contrary.
>
> *Ramirez* v. *State*, 455 N.E.2d 609, 613 (Ind. Ct. App. 1983).

no knowledge of it. There was no knowledge in Michigan whatsoever." (J.A. 65, R.566)[3]

Indiana Proceedings Under The IAD

On July 21, 1981, the petitioner was returned to Indiana pursuant to the IAD. (J.A. 75, R.580) On July 23, 1981, a Recommendation for Plea Bargain was filed in Cause 424. (J.A. 44-45, R.158-59)[4] On August 17, 1981, the petitioner moved to withdraw the plea bargain. The court granted the motion and set an omnibus hearing for October 14, 1981 and a jury trial for December 10, 1981. (J.A. 47, R.192)

On January 15, 1982, petitioner filed a motion to dismiss Cause 424 on the ground that the prosecution of this charge violated the IAD since the detainer lodged in Michigan dealt only with Cause 470. (J.A. 52-58, R.211-16) The court overruled the motion. (J.A. 111, R.219)

On May 11, 1982, the jury trial proceedings began.[5] Subsequently, petitioner pleaded guilty to the charges listed in Cause 470. The jury found the petitioner guilty

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[3] The petitioner also testified that on January 23, 1981, he met at the Michigan prison with his attorney who advised him of the possibility of a plea bargain involving Causes 470, 424, and two other unrelated Indiana "causes." (J.A. 72, R.576) He further testified that this plea bargain was never consummated, and that a plea bargain filed on July 23, 1981 was a separate and different agreement. (J.A. 72-75, R.576-79)

The record also contains testimony about a later conversation in April of 1981 with respect to a plea bargain. (J.A. 72-73, R.577) *See infra* note 27.

[4] Petitioner testified that, at the time he was brought back to Indiana, he was not involved in a plea bargain. (J.A. 135, R.1136)

[5] The petitioner requested that the court reconsider his motion to dismiss. After hearing arguments from counsel, the court again overruled the motion. (R.228)

on each count in Cause 424. (J.A. 113, R.264) On June 8, 1982, the petitioner was sentenced in Cause 424 to the Indiana Department of Corrections for 5 years. (J.A. 117-18, R.424) He was sentenced to two years on Cause 470; this sentence was to run consecutively to that in Cause 424. (J.A. 121, R.1033)

Post-Trial Proceedings

On July 22, 1982, the court heard and denied the petitioner's request for the appointment of a public defender. (R.431) On August 10, the petitioner filed a motion to correct errors (J.A. 122-25, R.432-36), which the court overruled on October 26, 1982. (J.A. 164, R.445)

The Appeal

The petitioner then filed a *pro se* appeal to the Court of Appeals of Indiana. This issue was one of first impression in Indiana. The Court of Appeals affirmed the trial court's denial of the motion to dismiss, finding that, although the petitioner's prosecution in Indiana for Cause 424 was outside of the terms of the IAD, Indiana nonetheless retained jurisdiction: "The manner in which a defendant is brought before the court has no effect upon the court's jurisdiction over him." *Ramirez* v. *State*, 455 N.E.2d 609, 613 (Ind. Ct. App. 1983). (J.A. 171) The court concluded: "Although we do not countenance the State's failure to comply with the provisions of the Agreement as to cause 424, the State's failure does not warrant dismissal of this case. . . . This is not to say Ramirez may not have a remedy for the State's failure to file a detainer against him in Cause 424 before trying him in that cause." *Id.* at 614. (J.A. 171)

The petitioner then filed a petition to transfer the appeal to the Indiana Supreme Court. On May 11, 1984, the Indiana Supreme Court denied the petition to trans-

fer. On July 13, 1984, the petitioner filed a pro se petition for certiorari, which this Court granted on October 29, 1984. On, November 13, 1984, the Court granted petitioner's motion for the appointment of counsel.

SUMMARY OF ARGUMENT

The plain meaning of the Interstate Agreement on Detainers (IAD) should be the basis of decision in this case. The signatory states meant what they said when, in section 5(d), they agreed that the requesting state would have temporary custody of the prisoner for the sole purpose of prosecution on the charge which forms the basis of the detainer. Since Michigan retained custody for all other purposes under section 5(g), Indiana had no authority to try the petitioner on charges not mentioned in the detainer.

Such a plain reading of the IAD is consistent with the general rules of statutory construction. It is also consistent with the role of interstate compacts in our federal system and with the particular purposes of the IAD. In its earlier cases, this Court has established the rule that the important interest of ensuring the integrity of the interstate compact requires that "unless the compact to which Congress has consented is somehow unconstitutional, no court may order relief inconsistent with its express terms." *Texas* v. *New Mexico*, ___ U.S. ___, ___, 103 S. Ct. 2558, 2565 (1983). Unless courts give an interstate compact the meaning it was intended to have by strictly enforcing its terms, states will be reluctant to enter into them and will be casual in their adherence to them.

The IAD was designed to produce ease and regularity in the management of interstate corrections and fairness for the prisoner. To achieve these goals, the states have bound themselves to a higher standard of behavior than

the one embodied in *Frisbie* v. *Collins*, 342 U.S. 519 (1952) and *Ker* v. *Illinois*, 119 U.S. 436 (1886). They agreed to accept, as a matter of federal law, a limitation on their usual exercise of criminal jurisdiction. The states recognized that intentional—or even sloppy unintentional—misrepresentations by a sister state can cause serious disruptions in a corrections program which exact a high cost from both the incarcerating state and the prisoner.

The Court of Appeals of Indiana treated the obligation of Indiana under the IAD as a matter of internal procedural law—not a federal duty. Its interpretation of the compact stands "as an obstacle to the accomplishment of the full purposes and objectives . . ." of the congressionally sanctioned compact. *Silkwood* v. *Kerr-McGee Corp.*, ___ U.S. ___, ___, 104 S. Ct. 615, 621 (1984).

ARGUMENT

I. Introduction

The immediate issue before this Court is an interpretation of the Interstate Agreement on Detainers (IAD). More precisely, the Court is asked to determine whether the Congress and the legislatures of the 48 states that have entered the compact meant what they said when, in section 5(d), they agreed that:

> The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations, of[6] [sic] complaints which form the basis of the detainer or detainers or for prosecution on any other charge or

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[6] The IAD has been so enrolled in the Indiana Code. "This probably should read 'or,' " Ind. Code Ann. § 35-2.1-2-4 n.1, at 487 (West). The IAD has been similarly recodified in Indiana, *see* § 35-33-10-4.

> charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

Moreover, there is a far broader issue at stake in this case—the vitality of the interstate compact in our federal system. This Court's interpretation of the IAD[7] in this case will have a significant impact on the usefulness of the interstate compact in solving other public policy questions that can best be addressed on an interstate basis. If commitments, freely undertaken in the interest of interstate harmony, are found to have "wax teeth,"[8] states will become understandably reluctant to enter into such arrangements. The alternative is reliance on federal legislative power to solve the problems at hand—an alternative which brings with it a significant shift in the ability of the states to take the initiative in solving problems for themselves. Indeed, it was, we submit, the failure of the Indiana Court of Appeals to recognize the federalism implications inherent in the IAD which caused it to interpret the pact as provincially as it did.

In the following pages, therefore, we shall argue that a plain reading of the text of the IAD makes it clear that the judgment of the Indiana Court of Appeals must be reversed; indeed, an analysis which takes into account the function of the interstate compact in our constitutional order makes such a disposition compelling.

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[7] There can be no doubt that the Interstate Agreement on Detainers is an interstate compact sanctioned by Congress and thus "transform[ed] . . . into a law of the United States" *Cuyler* v. *Adams*, 449 U.S. 433, 438 (1981).

[8] *People* v. *Esposito*, 37 Misc.2d 386, 391, 238 N.Y.S.2d 460, 465 (Queens County 1960) (also printed at 201 N.Y.S.2d 83, 88).

II. An Established Fact: A Violation of the IAD

We start our analysis of the precise issue presented in this case on what appears to be—and certainly ought to be—common ground: there was a violation of the IAD.

1. The statutory language is clear and unequivocal: section 5(d) states in pertinent part:

> The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations, of[9] [sic] complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction.

2. The facts of record clearly establish that the petitioner was returned from Michigan pursuant to a detainer which specified only the offenses set forth in Cause 470. (J.A. 88-106; R.555-59)

3. The Indiana Court of Appeals concluded that "a reasonable fact finder could only conclude Ramirez' presence in Indiana on Cause 424, dealing in a schedule IV controlled substance, was secured outside the terms of the Agreement." *Ramirez* v. *State*, 455 N.E.2d 609, 613 (Ind. Ct. App. 1983).

4. The State of Indiana in its Brief in Opposition to Petition for Writ of Certiorari concedes that "the Petitioner's presence in Indiana on Cause 424 . . . was secured in violation of the terms of the Agreement." (*Id.* at 7.)

III. The Consequences Of The Violation

A. The Plain Meaning Of The IAD

Given the fact that a violation of section 5(d) of the IAD did take place, the next—and crucial—focus in this case

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[9] *See supra* note 6.

must be upon the legal consequences of such a violation. In his motion to dismiss at trial and on appeal to the Indiana Court of Appeals, the petitioner submitted that the court was without authority to try him on the charges not mentioned in the detainer and not related to the charges mentioned in the detainer.

Here, again, the plain wording of the IAD should end the matter.[10] Section 5(g) states:

> For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in *the custody of and subject to the jurisdiction of the sending state. . . .*
>
> (emphasis added)

In short, since Michigan retained jurisdiction for all purposes other than the trial of Cause 470, Indiana had no authority to try petitioner on Cause 424 and, consequently, should have dismissed the proceeding.

Moreover, as we shall argue in the following subsections, the role of the interstate compact in our constitutional structure, and the overall purpose of the IAD to promote interstate harmony and cooperation in the area of criminal justice administration, offers no reason to

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[10] The limited authority of the receiving state to try the criminal charge set forth in the detainer and accompanying indictment is also evident from the Agreement's explicit provision that failure to commence trial within 120 days after the prisoner is returned will result in dismissal of the indictment. (Article 4 §§ (c)(e))

In the state appellate court, the State suggested that the absence of a similar provision with respect to the possibility of trial on an indictment not mentioned in the detainer demonstrates that such action was not contemplated by the drafters. However, a far less speculative, indeed plausible, explanation exists for the difference in approach. The entire scheme of sanctions set forth in the Agreement presupposes that the prisoner was properly brought into the state on a specific charge.

deviate from the usual rule that the words of a statute should be construed according to their plain meaning. Indeed, they add a justification for adhering to that basic rule of statutory construction.

B. Interpreting The Interstate Agreement On Detainers According To Its Plain Meaning Is Compatible With The Role Of Interstate Compacts In Our Constitutional Scheme

In *Petty* v. *Tennessee-Missouri Bridge Commission*, 359 U.S. 275 (1959), this Court noted, with a good deal of emphasis, that an interstate compact ought to be construed "as a living interstate agreement which performs high functions in our federalism. . . ." *Id.* at 279 (footnote omitted). In *Texas* v. *New Mexico*, ___ U.S. ___, ___, 103 S.Ct. 2558 (1983), the Court, with no less emphasis, said that a construction compatible with those "high functions" was achieved by construing a compact according to its plain meaning. Indeed, noted the Court, "unless the compact to which Congress has consented is somehow unconstitutional, no court may order relief inconsistent with its express terms." *Id.* at 2565. See also *California ex rel. Younger* v. *Tahoe Regional Planning Agency*, 516 F.2d 215, 218 (9th Cir. 1975).

We submit that the foregoing approach, developed by the Court in *Petty* and *Texas*, is a sound one and ought to be followed in this case. As we point out in greater detail in the following paragraphs, it is an approach compatible with the role which the interstate compact must play in our federal structure. That role is best understood by comparing the Constitution's three basic approaches to interstate relationships:

1. Constitutionally Imposed Minimal Standards Of Conduct

Through a variety of provisions, the Constitution sets constitutional minima for the relationships of the states in

certain crucial areas where particular stress in the interstate system can be expected. For instance, the Privileges and Immunities Clause,[11] which has received a good deal of attention from the Court in recent times, sets constitutional minima with respect to the treatment of citizens of one state by sister states. In similar fashion, the Full Faith and Credit Clause[12] sets the constitutionally minimum obligation of the states with respect to the completed judicial acts of sister states as well as with respect to the legislative acts of other states. The Extradition Clause[13] also sets the constitutional minima with respect to the obligation of one state to deliver up fugitives at the request of a sister state.

2. The Opposite Extreme: Federal Control

The Constitution recognizes, however, that these minimally acceptable modes of conduct may not be sufficient in all situations. Consequently, it also provides that the Congress can, through an exercise of the national legislative power, deal at the national level with problems of interstate relationships which require, at any given time in the Nation's development, the imposition of a national policy. As this Court acknowledged in *Cuyler* v. *Adams*, 449 U.S. 433, 442 n.10 (1981), the area at issue in this case—the interstate rendition of prisoners—is subject to congressional legislation under both the Commerce Clause[14] and the Extradition Clause.[15] *Id.* at 442.

There is, of course, a significant cost in terms of the country's federalism when Congress acts in such a nation-

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[11] U.S. Const. art. IV, § 2, cl. 1.

[12] U.S. Const. art. IV, § 1.

[13] U.S. Const. art. IV, § 2, cl. 2.

[14] U.S. Const. art. I, § 8, cl. 3.

[15] *See supra* note 13.

al way. The options of states to govern themselves, to deal with problems at the local level, to experiment, and to enter into cooperative arrangements on their own, is necessarily limited.[16] Therefore, to avoid such extremes, the Constitution also permits a mid-ground between the two options mentioned above—the interstate compact.

3. The Mid-Ground: The Compact Clause[17]

An interstate compact permits the states to take the initiative for the substantive solution to interstate problems. By comparison with the option set forth immediately above, the federal role here is far more passive. Thus, the basic quality of a federal system—permitting the states to solve their own problems— is preserved. At the same time, however, two important federal interests are protected. First, of course, there is the federal interest in ensuring that the compact does not infringe on the prerogatives of the federal government. *United States Steel Corp.* v. *Multistate Tax Commission*, 434 U.S. 452 (1978).[18] Second, and just as importantly, there is a very

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[16] "It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country." *New State Ice Co.* v. *Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

[17] U.S. Const. art. I, § 10, cl. 3.

[18] "[W]here Congress has authorized the States to enter into a cooperative agreement, and where the subject matter of that agreement is an appropriate subject for congressional legislation, the consent of Congress transforms the States' agreement into federal law under the Compact Clause," *Cuyler* v. *Adams*, 449 U.S. 433, 440 (1981) (footnote omitted). Congressional approval amounts to a legislative judgment that the agreement is not "likely to interfere with federal activity in the area," *id.* at 440 n.8 (quoting *United States Steel Corp.* v. *Multistate Tax Comm'n*, 434 U.S. 452, 485 (1978) (White, J., dissenting)), is not "likely to disadvantage other States to an important extent," *id.*, and is not "a matter that would better be left untouched by state and federal regulation," *id.*

important federal interest in ensuring the integrity of the interstate agreement and in the continuance of interstate harmony. *West Virginia ex rel. Dyer* v. *Sims*, 341 U.S. 22, 28 (1951).

This second federal interest must be carefully protected if the interstate compact is to remain a viable mechanism for the resolution of interstate problems. The interstate compact "adapts to our Union of sovereign States the age-old treaty-making power of independent sovereign nations." *Hinderlider* v. *La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92, 104 (1938). In the international community, treaties are to be construed to ensure that each signatory sovereign fulfills its commitment. Within the federal union, that objective ought to be even more paramount. Interstate agreements, if they are to remain a viable tool in our federal system, must be interpreted strictly so that the parties are held to their commitment. Put quite bluntly, states will only enter into such agreements and faithfully abide by their commitments if they know that they will be strictly enforced and not judicially rewritten.

Interpreting the IAD according to its plain meaning is, therefore, compatible with the purpose of the interstate compact. It promotes the expectations of the states and encourages their cooperation in the enforcement of the agreement. Therefore, we do not argue here for a judicially-imposed prophylactic rule. Rather we ask, quite simply, that this Court give to a legislative enactment, the IAD, the meaning it was clearly intended to have. *Frisbie* v. *Collins*, 342 U.S. 519, 523 (1952). "[T]he mandatory language of Article IV, together with its stringent penalties, manifests an intent that party States adhere strictly to procedures and time limits provided in the Agreement." *United States* v. *Eaddy*, 595 F.2d 341, 346 (6th Cir. 1979); accord *Burrus* v. *Turnbo*, 743 F.2d

693, 702 (9th Cir. 1984). See generally *Hughes* v. *District Court*, 197 Colo. 396, 400-01, 593 P.2d 702, 705 (1979).

In the context of Contract Clause[19] litigation, the Court has acknowledged that, when a government entity attempts to repudiate its own contractual obligation, a higher standard of scrutiny is justified than when the government impairs the obligation of private contracts. The "State's self-interest is at stake." *United States Trust Co.* v. *New Jersey*, 431 U.S. 1, 26 (1977). We suggest that, when a state offers a "self-serving construction of its duty . . .," *Petty* v. *Tennessee-Missouri Bridge Commission*, 359 U.S. 275, 284 (1959) (Frankfurter, J., dissenting), not to a private entity but to a sister state,[20] its explanation ought to be subject to particularly searching scrutiny—especially when it deviates from the plain meaning of the agreement. Here, the state simply has not carried that burden.

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[19] U.S. Const. art. I, § 10, cl. 1.

[20] In *Green* v. *Biddle*, 21 U.S. (8 Wheat.) 1, 92 (1823), this Court treated a state law in contravention of an interstate compact as impairing the obligation of contracts. See also *Virginia* v. *West Virginia*, 246 U.S. 565 (1918). See generally *Pennsylvania* v. *The Wheeling & Belmont Bridge Co.*, 59 U.S. (18 How.) 421, 433 (1855) (dicta). In *C. T. Hellmuth & Assocs.* v. *Washington Metropolitan Area Transit Auth.*, 414 F. Supp. 408, 409 (D. Md. 1976), the court wrote:

> Upon entering into an interstate compact, a state effectively surrenders a portion of its sovereignty; the compact governs the relations of the parties with respect to the subject matter of the agreement and is superior to both prior and subsequent law. Further, when enacted, a compact constitutes not only law, but a contract which may not be amended, modified, or otherwise altered without the consent of all parties.

Accord *Jacobson* v. *Tahoe Regional Planning Agency*, 566 F.2d 1353, 1358 (9th Cir. 1977), *Wilkens* v. *Erickson*, 505 F.2d 761, 762 (9th Cir. 1974), *Wilkens* v. *Erickson*, 484 F.2d 969, 973 (8th Cir. 1973).

C. Interpreting The Interstate Agreement On Detainers According To Its Plain Meaning Is Compatible With The Purposes Of This Compact

1. The Purposes Of the IAD

The purposes of the IAD are set forth succinctly in Article I of its text:

> The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations, or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

As this Court noted at some length in *United States* v. *Mauro*, 436 U.S. 340 (1978), prior to the enactment of the IAD, the problem of interstate rendition of prisoners placed significant strains on the interstate system:

> Prior to the Agreement, there were several means by which States could obtain prisoners from other jurisdictions, none of which was entirely satisfactory. The traditional method was the use of formal extradition proceedings. This required a request for the prisoner by the Governor of the receiving State. It was sent to the Governor of the State that had custody of the prisoner, and he was permitted to investigate the situation to determine if the prisoner should be surrendered. If the Governor agreed to the extradition, he issued an arrest warrant against the

> prisoner, who was then permitted to challenge the legality of his arrest.
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> Rather than going through this formal procedure, some States entered into special contracts controlling the transfer of prisoners. The effort involved in arriving at such a contract, however, was often thought to outweigh the benefit of the simplified procedures unless there were frequent prisoner transfers between two States.
>
> Because of problems with both of these methods, law enforcement authorities developed the informal practice of filing detainers against the prisoners; rather than seeking immediate transfer, the State would merely notify the State having custody of the prisoner that he was wanted at the completion of his sentence. This practice led to various problems.
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> 436 U.S. at 355 n.23.

Quoting from the Fourth Circuit's decision in *Pitts* v. *North Carolina*, 395 F.2d 182, 187 (1968) (footnotes omitted), the Court further elaborated on the abuses the states sought to avoid by implementing the IAD:

> Detainers, informal aides [sic] in interstate and intrastate criminal administration, often produce serious adverse side-effects. The very informality is one source of the difficulty. Requests to an imprisoning jurisdiction to detain a person upon his release so that another jurisdiction may prosecute or incarcerate him may be filed groundlessly, or even in bad faith, as suspected by the appellant in this case. The accusation in a detainer need not be proved; no judicial officer is involved in issuing a detainer. As often happens, the result of the then unestablished charge upon which the detainer in this case rested was that the detainee was seriously hampered in his quest for a parole or commutation.
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> 436 U.S. at 358 n.25.

While the informal practice of filing detainers against a person incarcerated in another state certainly had an

adverse effect upon the prisoner, it also had a very significant effect on the operations of the penal system of the incarcerating state as well. As this Court pointed out in *Mauro:*

> In recommending the adoption of the Agreement, the Council of State Governments outlined some of the problems caused by detainers that the Agreement was designed to address. It noted that prison administrators were "thwarted in [their] effort[s] toward rehabilitation [because t]he inmate who has a detainer against him is filled with anxiety and apprehension and frequently does not respond to a training program." Council of State Governments, Suggested State Legislation Program for 1957, p. 74 (1956). Furthermore, the prisoner was often deprived of the ability to take advantage of many of the prison's programs aimed at rehabilitation, merely because there was a detainer lodged against him. This problem was noted by the Director of the Federal Bureau of Prisons, who in 1959 stated that he "remember[ed] the day when the presence of a detainer automatically guaranteed that the inmate would be held in close custody and denied training and work experiences in more relaxed situations, such as the farm, which frequently represent a valuable resource in treating prisoners and testing their progress." Bennett, The Last Full Ounce, 23 Fed. Prob. 20, 21 (June 1959). The Council of State Governments also pointed out that the existence of detainers presented problems in sentencing; when detainers had previously been filed against the defendant, the sentencing judge would hesitate to give as long a sentence as he thought might otherwise be indicated, there being a possibility that the defendant would be required to serve subsequent sentences. The Council stated that "proper sentencing, as well as proper correctional treatment, is not possible until the detainer system is modified." Council of State Governments, *supra*, at 74. Similar concerns were expressed by the Attorney General in his recommendation to Congress. *See supra*, at 353.
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> 436 U.S. at 359-60.

In agreeing to the terms of the IAD, then, the states sought to replace a sloppy, casual and sometimes vindictive system with one which was compatible with the goals of a modern corrections system. Two results were intended: a.—ease and regularity in the management of interstate corrections; b.—fairness to the prisoner involved. In the following paragraphs, we shall argue that both of these goals are furthered by adherence to the plain meaning of the compact.

2. Achieving Cooperative Federalism In The Management Of Interstate Corrections

The IAD represents a mutual effort by the states of the Union that stands in stark contrast to "an alarming tendency toward a simplistic penological philosophy that if we lock the prison doors and throw away the keys, our streets will somehow be safe." *Rhodes* v. *Chapman*, 452 U.S. 337, 377 (1981) (Marshall, J., dissenting). In *United States* v. *Mauro*, this Court noted that "[the] purpose [of the IAD] is to encourage the expeditious disposition of such charges and to provide cooperative procedures among member States to facilitate such disposition." 436 U.S. at 351. In forging a *modus operandi* for their day-to-day contact in an area of vital state interest, the signatory states had a higher goal than mere compliance with the constitutionally imposed "minimum standards of conduct" for the states of the federal Union. They held themselves to a higher standard of cooperation and respect for the legitimate governmental interests of each other. While conduct such as that encountered in *Frisbie* v. *Collins*, 342 U.S. 519 (1952) and *Ker* v. *Illinois*, 119 U.S. 436 (1886) might be constitutionally acceptable as a general proposition,[21] it would no longer be practiced by

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[21] While the Court clearly does not need to reach the issue in this case, we note that the more recent decisions of this Court cast some

the signatory states. At least in the area covered by the IAD, such behavior was simply not conducive to the attainment of the correctional goals of each state.

Therefore, by adhering to the IAD, Indiana bound itself, in exchange for greater cooperation from its sister states in the administration of its own criminal justice system, to accept, as a matter of federal law, a restriction on the usual exercise of its own criminal jurisdiction. While its courts normally exercise criminal jurisdiction over any person within its borders, Indiana, by virtue of the IAD, may exercise that jurisdiction only with respect to a matter mentioned in the detainer or arising out of the same transaction when it has procurred the defendant's presence from the custody of a sister state. This limitation—federally imposed through the IAD but freely agreed to by Indiana—exists because of Indiana's previous commitment not to the petitioner but to its sister states. It took, in the words of the IAD, "temporary custody" from Michigan for a specific purpose—trial of Cause 470. It agreed to limit its infringement on Michi-

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doubt on the continued vitality of *Frisbie* and *Ker*, at least as general propositions. In *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286 (1980), the Court noted that the Due Process Clause, "acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment." *Id.* at 294. In *Insurance Corp. of Ireland, Ltd.* v. *Compagnie des Bauxites de Guinee*, 456 U.S. 694 (1982), the Court appeared to restrict its earlier language by noting that the "restriction on state sovereign power . . . must be seen as ultimately a function of the individual liberty interest preserved by the Due Process Clause." *Id.* at 702 n.10. However, since, in the interstate rendition of prisoners, it is the strictures of the federal system which create the potential for mistreatment of the prisoner, it is quite appropriate to consider a violation of those mechanisms established to ensure the smooth operation of the federal system as a source of unfairness to the prisoner as well.

gan's authority for that purpose and for that purpose only. Indeed, under section 5(g) of the IAD, Michigan retained custody of Ramirez for all purposes other than the trial of Cause 470. See *People* v. *Hayden*, 98 Misc.2d 574, 414 N.Y.S.2d 473 (N.Y. Sup. Ct. 1979); see also *Mills* v. *State*, 626 S.W.2d 583 (Tex. App. 1981). Assumption of temporary custody for the purpose of disposing of a particular criminal charge is a significant intrusion into the sovereign power of the incarcerating state to effectuate its own criminal justice system through a sustained period of rehabilitation. Its courts have imposed a sentence upon the prisoner designed to effectuate his rehabilitation. Therefore, important penological interests of the incarcerating state are interrupted by this demand for the prisoner and it has a right, recognized in the IAD, to know the degree and duration of the intrusion into its processes. Intentional misrepresentations—or even sloppy unintentional ones—by a sister state can seriously impair the ability of the incarcerating state to achieve its important penological objectives.

It should be noted that we do not challenge, as was done in at least one case raising the same issue, the general proposition that a court may exercise criminal jurisdiction over any person who is physically present within the state. See, e.g., *People* v. *Pagan*, 84 Misc.2d 565, 377 N.Y.S.2d 420 (N.Y. Sup. Ct. 1975). We simply submit that, by ratification of the IAD, Indiana agreed to temper its exercise of the jurisdiction it might otherwise exercise.[22] See generally *Camp* v. *United States*, 587 F.2d

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[22] It was a similar failure to recognize fully the federal nature of this obligation which led the Colorado Supreme Court to the same error in *Brown* v. *District Court*, 194 Colo. 225, 571 P.2d 1091 (1977); accord *Jones* v. *Florida*, 386 So.2d 804 (Fla. Dist. Ct. App. 1980). These courts did not, of course, have the benefit of this Court's ruling in *Cuyler*. The Superior Court of Pennsylvania similarly ignored the

397, 399 n.4 (8th Cir. 1978) (characterizing the somewhat analogous "speedy trial" provisions of the IAD as a "condition precedent" to prosecution). We also note that self-imposition of restrictions on the exercise of general judicial jurisdiction in order to forward other state interests is not an unknown device in American law. The decision to exercise such restraint in the use of judicial jurisdiction is a matter of legislative decision. For instance, many states grant immunity from civil suit to persons who enter the state to attend civil or criminal proceedings.[23] Such immunity has also been extended to criminal process. The Uniform Act to Secure the Attendance of Witnesses From Without A State In Criminal Proceedings, 11 U.L.A 1 (1936), (adopted in Indiana as §§ 35-37-5-1 to 35-37-5-9) provides in section 4:

> If a person comes into this state in obedience to a summons directing him to attend and testify in this state he shall not while in this state pursuant to such summons be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.
>
> If a person passes through this state while going to another state in obedience to a summons to attend and testify in that state or while returning therefrom, he shall not while so passing through this state be subject to arrest or the service of process, civil or

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federalism obligations inherent in the IAD in *Commonwealth* v. *Frison*, 301 Pa. Super. Ct. 498, 448 A.2d 18 (1982). In any event, "the meaning of a compact is a question on which this Court has the final say." *Petty* v. *Tennessee-Missouri Bridge Comm'n*, 359 U.S. 275, 278 (1959) (footnote omitted).

[23] *See* E. Scoles & P. Hay, *Conflict of Laws* § 11.18, at 375 (1982); *see also* R. Leflar, *American Conflict of Law* § 27, at 47 (3d ed. 1977); R. Weintraub, *Commentary on the Conflict of Laws* § 4.34, at 213 (2d ed. 1980).

> criminal, in connection with matters which arose before his entrance into this state under the summons.

While the same protection is not extended to the *non*-incarcerated fugitive who is apprehended in another state,[24] here, where the obtaining of criminal jurisdiction involves a serious intrusion into the criminal justice and correctional activities of another state, Indiana—and almost all of the other states of the Union—have determined that such a partial limitation on its ability to exercise criminal jurisdiction is appropriate in light of the benefits to interstate cooperation received in return.

In sum, the states, in agreeing to this mechanism, intended not only "to protect the legitimate interests of the prisoner in having open charges expeditiously resolved, but also to harmonize the conflicting sovereign interests of the two States involved and to minimize any disruption to the prison regimen and the prisoner's participation in it." *Boyd* v. *State*, 51 Md. App. 197, 202-03, 441 A.2d 1133, 1336-37 (Md. Ct. Spec. App. 1982) (footnote omitted). If the arrangement is to work, this Court must hold the states to the bargain they themselves have forged. See *Texas* v. *New Mexico*, ___ U.S. ___, 103 S.Ct. 2558 (1983).

3. Protecting The Prisoner In The Interstate Context

In addition to holding the signatory states to a level of conduct which would foster interstate cooperation and protect states from needless disruption of their penal system, the IAD was also designed "to protect prisoners against whom detainers are outstanding." *Cuyler* v. *Adams*, 449 U.S. 433, 449 (1981). It accomplished this end

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[24] Uniform Criminal Extradition Act § 26, 11 U.L.A. 51, 302 (1936) (adopted in Indiana as § 35-33-10-3).

by providing the prisoner with procedural protections specifically designed to prevent the abuses which the legislatures and the Congress had discovered in their study of interstate rendition of prisoners. The prisoner has the right to rely upon the plain meaning of the IAD. The State "through its agents and its control of the procedural aspects of the IAD, controls the only ultimate guarantee of performance for the benefit of the prisoner." *Pittman* v. *State*, 301 A.2d 509, 513 (Del. 1973). The IAD "is obviously remedial in character[,] . . . [and] should be construed liberally in favor of [those whose problems were sought to be alleviated.]" *United States ex rel. Esola* v. *Groomes*, 520 F.2d 830, 836 (3d Cir. 1975) (quoting *State* v. *West*, 79 N.J. Super. 379, 384, 191 A.2d 758, 760 (App. Div. 1966)). See generally *Commonwealth* v. *Gregg*, 470 Pa. 323, 327-29, 368 A.2d 651, 653 (1977).

For some, prompt disposition of the charges was very important. As the Court noted in *Cuyler*, "a primary purpose of the Agreement is to protect prisoners against whom detainers are outstanding." As stated in the House and Senate Reports:

> "[A] prisoner who has had a detainer lodged against him is seriously disadvantaged by such action. He is in custody and therefore in no position to seek witnesses or to preserve his defense. He must often be kept in close custody and is ineligible for desirable work assignments. What is more, when detainers are filed against a prisoner he sometimes loses interest in institutional opportunities because he must serve his sentence without knowing what additional sentences may lie before him, or when, if ever, he will be in a position to employ the education and skills he may be developing." H.R. Rep. No. 91-1018, p. 3 (1970); S. Rep. No. 91-1356, p. 3 (1970).
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> 449 U.S. at 449.

For a prisoner in this situation, Article 3 of the IAD provides that he be notified of the outstanding charges and given the opportunity to request trial. Failure to bring him to trial within 180 days results in the dismissal of the charges. Consequently, the prisoner is assured of a speedy trial. Cf. *Smith* v. *Hooey*, 393 U.S. 374 (1969). *See generally* Committee on the Judiciary, Enacting the Interstate Agreement on Detainers into Law, H.R. Rep. No. 1018, 91st Cong., 2d Sess. 6 (1970).

The drafters also recognized, however, that, under some circumstances, a prisoner might believe it necessary to resist his transfer for trial in another state. In addition to the right to petition the Governor of the sending state (4(a)), a prisoner in this situation is entitled to the procedural protections of the Extradition Act (in those states which have adopted it) as well as any other procedural protections which the sending state guarantees persons being extradited from within its borders. *Cuyler* v. *Adams*, 449 U.S. 433, 447-48 (1981).

As the Colorado Supreme Court noted in *Hughes* v. *District Court*, 197 Colo. 396, 593 P.2d 702 (1979), "[t]here is no requirement in the Interstate Agreement on Detainers that a prisoner demonstrates that prejudice resulted from a violation of its provisions. It does not appear that such a requirement would further the purposes of the Agreement as spelled out in Article I. . . ." *Id.* at 402; 593 P.2d 706. The State chose to employ the IAD; it controls the standard of performance in its execution. See *Pittman* v. *State*, 301 A.2d 509 (Del. 1973).[25] However, at trial, petitioner testified that, while a pris-

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[25] As this Court noted in *Cuyler* v. *Adams*, 449 U.S. 433, 448 (1981), "Article IX of the Detainer Agreement states that the Agreement 'shall be liberally construed so as to effectuate its purpose.' "

oner in Michigan, he was only informed of a detainer from Indiana with respect to Cause 470:

Q. And directing your attention to earlier this year, approximately March of 1981, where did you reside?

A. Southern Michigan Prison at Jackson

JUDGE: I'm sorry. What date?

MR. McSHANE: Around March of 1981, Your Honor.

Q. Was that correct, sir?

A. Yes, Southern Michigan Prison at Jackson.

Q. And did there come a time when you received notice through the prison administration up in Jackson about the pending charges against you here in Indiana?

A. Yes, I received a detainer against me on March 16th or 19th. One of the two dates. At that time I appeared in front of the counsel and they told me they had affidavits and probable cause. And a bench warrant and two indictments of dealing in marijuana. One on the 17th and one was on the 21st of 1979.

Q. Representation made to you sir, what did they [sic] charges pertain to?

A. Yes, it was Cause No. 470, dealing in marijuana.

Q. Ok, was there any, at that time, oral notice given to you about the desire of the State of Indiana as communicated through authorities in the State of Michigan to prosecute you on three counts of Dealing in a Schedule IV Controlled Substance?

A. No, there wasn't.

Q. Did any of the documents which were shown to you pertain to the charges in Cause No. 470, contain any information, quote, any criminal information against you pertaining to charges of Dealing in a Schedule IV Controlled Substances?

A. No, there wasn't.

(J.A. 61-62, R.561-62).

He further testified that, if he had been aware of Indiana's intention to try him on Cause 424,[26] he would have exercised his rights under the IAD and the Uniform Extradition Act:[27]

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[26] The charges in Cause 424 here were substantially different from those set forth in Cause 470. There can be no question that, unlike the defendants in *State* v. *Tyson*, 603 S.W.2d 748 (Tenn. Crim. App. 1980) and *Dotson* v. *State*, 463 N.E.2d 266 (Ind. 1984), the petitioner was not apprised of the State's intention to try him on Cause 424. Indeed, the Indiana Court of Appeals specifically noted that "[b]ased on the evidence, a reasonable fact finder could only conclude Ramirez' presence in Indiana on Cause 424 . . . was secured outside the terms of the Agreement." 455 N.E.2d at 613.

[27] Similar testimony appears at a later point in the hearing:

> Q. Mr. Ramirez, would you have, in fact, formally waived extradition from the State of Michigan to the State of Indiana last March had you known that the state was seeking, the State of Indiana, was seeking to bring you down here to prosecute you for three C felonies being the counts in Cause No. 424 Dealing in a Schedule IV Controlled Substance?
>
> A. Yes, I would have fought it. I would never have returned to Indiana.
>
> (J.A. 68, R.571)

Petitioner also testified that he had consulted with his attorney about a plea bargain on both causes at an earlier date in January 1981. (J.A. 72, R.576) It was not consummated. (J.A. 72-73, R.576-77) He also described a later conversation with his attorney about a plea bargain:

> Well, then in April he come to see me. Mr. Lockwood came to see me in April of 1981. At that time he informed me that Mr. Bly who took the prosecutor attorney's job, I mean, he was going to appear for the State and he come and told me, and I said well, what's the deal on the two years. And at that time he says that the two years was the deal between him and Mr. Weike. So, he said, well, they lodged a detainer. I guess you already know that so you'll be coming back to Kokomo, Indiana, Howard County. And I said well, whatever, you know, so I came back on July 21 of '81.
>
> (J.A. 72-73, R.577)

> Q. Now, Mr. Ramirez, had you known that the State of Indiana was seeking to extradite you for prosecution under the Schedule IV counts in Cause No. 424, would you have voluntarily waived extradition from Michigan, or would you have sought legal counsel and perhaps a hearing on that?
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> A. I definitely would have had a hearing.
>
> (J.A. 63, R.564)

Since he never had the opportunity to exercise those rights, the record does not reflect what the outcome of such a hearing would have been. Nor do we know what action the Governor of Michigan would have taken if he had been apprised of Indiana's intentions.[28] It is clear, however, that if the trial court had recognized that, under the IAD, it had no authority to try the petitioner on Cause 424 and had consequently dismissed that charge, petition-

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A plea bargain was signed on July 23, 1981 (J.A. 73, R.578) and later withdrawn. (J.A. 47, R.192) The petitioner testified, however, that, at the time he returned to Indiana he was not engaged in plea negotiations:

> Q. Who was that attorney?
>
> A. Jeffrey Lockwood.
>
> Q. At the time that you were brought back here were you not engaged through him with the State of Indiana in a plea bargain?
>
> A. No, I wasn't.
>
> (J.A. 135, R.1136)

[28] Assuming, *arguendo*, that the defendant can waive this federally-imposed barrier to the exercise of criminal jurisdiction, see, e.g. *People* v. *Moody*, ____ Colo. ____, 676 P.2d 691 (1984), it is clear that neither the trial court nor the appellate court were of the view that petitioner had not preserved his objection and both courts proceeded to decide the issue on the merits. Compare *Dotson* v. *State*, 463 N.E.2d 266, 269 (Ind. 1984) (IAD rights held waived when not timely raised at trial). See generally *United States* v. *Lawson*, 736 F.2d 835 (2d Cir. 1984) (failure to raise IAD rights during first trial did not bar raising them after remand for a new trial).

er would not have an additional felony conviction on his record. Nor would he have had consecutive sentences imposed upon him.

There is no question that a prisoner, under the Indiana Court's proposed reading of the IAD, can lose important rights. While the procedural guarantees available in such circumstances are understandably limited, *Cuyler* v. *Adams*, 449 U.S. 433, 443 n.11 (1981); *Michigan* v. *Doran*, 439 U.S. 282, 286-87 (1978), they may, in a given case, be vital. There is also the distinct possibility that the prisoner may convince the Governor of the incarcerating state that refusal to honor the extradition request, perhaps only temporarily, would be appropriate. Cf. *Kentucky* v. *Dennison*, 65 U.S. (24 How.) 66, 107 (1861). For instance, if the prisoner were in the crucial stages of a drug rehabilitation program and, at considerable state expense, had progressed to that point, the Governor might well be convinced that his extradition to another state would not be appropriate. See *Cuyler* v. *Adams*, 449 U.S. 433, 437 n.4 (1981).

In short, both Michigan and the petitioner had the right to be notified of the real nature of Indiana's request. The petitioner had a right to convince the Governor that extradition on those offenses was not appropriate. The Governor had the right to determine whether extradition was compatible with the interests of Michigan. By its failure to disclose fully its intentions, Indiana prevented both from exercising their federally-guaranteed rights.[29]

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[29] Nor does this case reach the issue of whether proceeding under the IAD is the exclusive method by which a demanding state may seek the return of a fugitive from another state. Cf. *State ex rel. Bailey* v. *Shepard*, 584 F.2d 858 (8th Cir. 1978). While it is established that a federal court may demand a state prisoner by means of a federal writ of habeas corpus *ad prosequendum*, *United States* v.

IV. Conclusion: The Underlying Problem: Failure To Acknowledge A Federal Obligation

In the foregoing sections, we have argued that adherence to the general principle that statutes ought to be interpreted according to their plain meaning is consistent with the role of interstate compacts in our federal structure and consistent with the purposes of the IAD. Indeed, any other interpretation of the language of section 5(d) would stand "as an obstacle to the accomplishment of the full purposes and objectives . . ." of the congressionally sanctioned compact. *Silkwood* v. *Kerr-McGee Corp.*, ___ U.S. ____, ____, 104 S.Ct. 615, 621 (1984); see also *Pacific Gas And Electric Co.* v. *State Energy Resources Conservation and Development Commission*, 461 U.S. 190, 203-04 (1983); *Fidelity Federal Savings & Loan Association* v. *De La Cuesta*, 458 U.S. 141, 152-54 (1982). *Jacobson* v. *Tahoe Reginal Planning Agency*, 566 F.2d 1353, 1358 (9th Cir. 1977), rev'd in part and aff'd in part sub nom. *Lake Country Estates, Inc.* v. *Tahoe Regional Planning Agency*, 440 U.S. 391 (1979). If the signatory states to the IAD do not keep their word and adhere to the arrangement to which they freely subscribed, the cooperative federalism intended by the agreement—and expected by the Congress—will be significantly frustrated. The callousness and sloppiness in intergovernmental administration of criminal justice which existed prior to the date of the IAD will once again become the norm. "[T]he way would be open for prosecutors to file detainers on the least serious charge pending against a prisoner and then proceed on numerous other more serious warrants after the defendant is within the

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Mauro, 436 U.S. 340 (1978), it is not at all clear that this ancient writ has any federally-recognized analog when two states are involved. In any event, here, the IAD was used—and used incorrectly—to the detriment of both the Michigan authorities and the prisoner.

jurisdiction, without concern for the protections offered by the IAD." *People* v. *Browning*, 108 Mich. App. 281, 295, 310 N.W.2d 365, 372 (1981).

The Indiana Court of Appeals in its opinion and the State of Indiana in its Brief In Opposition to Petition for Writ of Certiorari simply did not acknowledge the important federal obligation to the other signatory states which Indiana has undertaken under the IAD. Both have been content to construe the non-compli. nce with requirements of the IAD as an "irregularity" (Brief in Opposition 7) in "statutory procedural rules" (*id.* at 8).

It is this failure to appreciate the significance of the federal responsibility at stake in the administration of the IAD which has precipitated the error of the Indiana Court of Appeals. The Court cited in support of its position this Court's holdings in *Frisbie* v. *Collins*, 342 U.S. 519 (1952) and *Ker* v. *Illinois*, 119 U.S. 436 (1886). *Ramirez* v. *State*, 455 N.E.2d. 609, 613 (Ind. Ct. App. 1983). In those cases, the Court held, in essence, that the state was not deprived of its authority to exercise criminal jurisdiction over a defendant simply because the defendant had been forcibly abducted in another state and brought within the court's jurisdiction against his will.

While *Frisbie* and *Ker* may still represent, as a general proposition, minimal acceptable conduct under our constitutional framework[30], the States of the Union, by their agreement to adhere to the IAD, have agreed that such conduct is not acceptable when the integrity of another state's penal system is at issue. Here, a higher, more cooperative way of doing business is now required of a state. Other states expect adherence to that standard; the Congress, in return for its forbearance in instituting tighter federal control of the area, also expects it.

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[30] *See supra* note 21.

Rather than affirmatively assuming plenary control over this vital area of interstate relations, as it undoubtedly could have done, *Cuyler* v. *Adams*, 449 U.S. 433, 442 n.10 (1981), Congress decided to leave the substance of the arrangement to the states. Yet, there remained a very important federal interest in seeing that the arrangement works. Congress, by consenting to this arrangement—and by continuing to permit the arrangement rather than subjecting the area to federal control—made it clear that there is an important and continuing federal interest in adherence to the terms of the compact. As Justice Jackson put it in *West Virginia ex rel. Dyer* v. *Sims*, 341 U.S. 22, 36 (1951) (Jackson, J., concurring):

> Estoppel is not often to be invoked against a government. But West Virginia assumed a contractual obligation with equals by permission of another government that is sovereign in the field. After Congress and sister States had been induced to alter their positions and bind themselves to terms of a covenant, West Virginia should be estopped from repudiating her act. For this reason, I consider that whatever interpretation she may put on the generalities of her Constitution, she is bound by the Compact.

In short, we submit that the Court of Appeals of Indiana did not adequately take into account the federal duty of interstate cooperation and, consequently, it erred in treating the requirements of the IAD as if they were matters of state procedural law. Indiana's obligation to the other states of the Union require that the judgment be reversed.

For the foregoing reasons, the petitioner respectfully requests that the judgment of the Court of Appeals of Indiana be reversed.

Respectfully submitted,

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